

11868-1A
RECORDATION NO. Filed 1425

JUN 2 1980 -4 05 PM

INTERSTATE COMMERCE COMMISSION

Amtrak



11868-B
RECORDATION NO. Filed 1425

June 2, 1980

JUN 2 1980 -4 05 PM

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

0-154A184

JUN 2 1980

Date
Fee \$ 110.00

CC Washington, D. C.

Dear Sir:

Herewith for recording pursuant to Section 20c of the Interstate Commerce Act are 5 executed counterparts of:

1. a Loan Agreement and Chattel Mortgage dated as of May 30, 1980 between National Railroad Passenger Corporation, as lender and Bombardier Credit, Inc., as borrower;
2. a Lease Agreement dated as of January 28, 1977 between Bombardier Inc., as lessor, and National Railroad Passenger Corporation, as lessee, with an Assignment Agreement dated as of May 30, 1980 among Bombardier, Inc., as assignor, Bombardier Credit, Inc., as assignee, and National Railroad Passenger Corporation, as lessee.

The addresses of the parties to the above listed documents are as follows:

National Railroad Passenger Corporation
400 North Capitol Street, N. W.
Washington, D. C. 20001

Attention: Director, Equipment Maintenance

Bombardier Credit, Inc.
c/o Elliot & Hutchins
East Main Street Road
Malone, New York 12953

Attention: President

RECEIVED
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I.C.C.
FEE OPERATION BR.

Bombardier, Inc.
800 Dorchester Boulevard, West
Montreal, Quebec

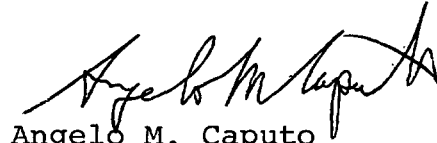
Attention: Vice President, Marketing
Mass Transit Division

The railroad equipment covered by these documents consists of two LRC trains each consisting of one diesel powered locomotive bearing numbers 38 and 39 and four coaches and one food service car bearing numbers 40 to 49, inclusive.

Also enclosed is a check in the amount of \$110.00 for the required recordation fee.

Please accept for recordation two counterparts of each of these documents, stamp the remaining 3 each with the appropriate recordation number, and return all 3 to the person delivering the same, together with your fee receipt.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Angelo M. Caputo", with a stylized flourish at the end.

Angelo M. Caputo
Assistant Vice President-
Finance and Controller

LEASE AGREEMENT

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INTERSTATE COMMERCE COMMISSION

This Agreement dated as of January 28, 1977 by and between Bombardier Inc. (formerly known as Bombardier-MLW Limited and hereinafter called "Bombardier"), a corporation organized and existing under the laws of Canada with offices at 800 Dorchester Blvd. West, Montreal, Quebec, as Lessor, and National Railroad Passenger Corporation (hereinafter called "Amtrak"), a corporation established pursuant to the Rail Passenger Service Act, as amended, and organized and existing under the laws of the District of Columbia, with offices at 400 North Capitol St. N.W., Washington, D.C. 20001, as Lessee.

WITNESSETH:

WHEREAS, Amtrak wishes to lease two trains as hereinafter more particularly described, of a type known as Light, Rapid, Comfortable ("LRC") manufactured by Bombardier in order to evaluate (in cooperation with the Federal Railroad Administration) the feasibility of increasing the speed of Amtrak train operation over certain lines; and

WHEREAS, Bombardier is prepared to lease such trains to Amtrak on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

1. The Trains. Bombardier hereby leases to Amtrak and Amtrak hereby takes from Bombardier two LRC trains (Trains) each consisting of one diesel powered locomotive (Locomotives), four coaches and one food service car containing parlor car type accommodations (Coaches), all as described in the attached specification (Exhibit A), and any subsequent supplements thereto which may be mutually agreed.

2. Lease Term. The term of this lease with respect to each Train (Lease Term) shall begin on the date of acceptance (as defined in Section 4) of each such Train and unless extended pursuant to Section 26.1 hereof shall in each case continue for one (1) year from such date or until termination under either Section 6.2, Section 25 or Section 26.2 hereof or until payment of the Stipulated Loss Value for such Train pursuant to Section 15 hereof.

3. Testing Prior to Acceptance. The parties have agreed on a program of testing (set forth in Exhibit A) to insure that the Trains have been constructed in accordance with said Exhibit A and are in satisfactory operating condition. Bombardier, at its expense shall carry out such test program and shall give Amtrak no less than ten (10) days advance notice of the date and place such testing shall commence.

In the event any defects are discovered during the testing, Bombardier shall promptly cause their correction before delivery of the Trains to Amtrak. Amtrak, at its expense, shall have the right to have a reasonable number of inspectors present during such testing.

4. Acceptance.

4.1 Bombardier agrees to have the first Train completed, satisfactorily tested and ready for acceptance by Amtrak on or before April 15, 1980 and to have the second Train completed, satisfactorily tested and ready for acceptance by Amtrak on or before May 15, 1980.

4.2 Upon notification by Bombardier that each Train is ready for acceptance, Amtrak at its expense shall make an acceptance inspection of said Train within seven (7) days of receipt of said notification. If such inspection determines that the Train is acceptable in accordance with this Agreement, an authorized representative of Amtrak shall sign a Certificate of Acceptance, as shown in Exhibit B, within three (3) days of said inspection; however, execution of the Certificate of Acceptance by the Amtrak representative does not constitute any waiver by Amtrak of its rights under Section 12 hereof. Such Certificate shall also contain a certification

by Bombardier that the Train has been constructed in accordance with Exhibit A.

4.3 Delivery of the Trains to Amtrak and acceptance thereof shall take place at Bombardier's plant in Montreal or at such other place as may be mutually agreed.

5. Transportation. Following acceptance of each Train, Amtrak shall be responsible for appropriate movement of same from the place of acceptance to the United States, all at Amtrak's expense.

6. Compliance with Governmental Requirements.

6.1 If between the date hereof and acceptance of the Trains, any governmental agency or railroad with which Amtrak has a contract to operate its trains issues orders, rules or regulations or amends those presently in effect to preclude the contemplated operation by Amtrak of the Trains in accordance with Section 9 or denies any approval necessary for such operation, Amtrak shall give Bombardier prompt notice of any such governmental or railroad action and shall have the right to exercise one of the following options within thirty (30) days following such action: (i) under the provisions of Section 8 to request Bombardier to make such modifications as

are necessary to effect compliance by the Trains therewith or to obtain such approval and the period required to effect such modifications shall be deemed an event of force majeure under Section 22 hereof, or (ii) to terminate this Agreement in which event Amtrak shall only be obligated to reimburse Bombardier for all out-of-pocket expenses reasonably incurred in connection with these Trains including without limitation all manufacturing costs and related overhead expenses incurred by Bombardier in the manufacture of the Trains up to and including the date of termination minus any payments made to Bombardier in connection with the manufacture of the Trains. Upon payment of such an amount, title to the Trains or any portion thereof for which payment is made by Amtrak shall pass to Amtrak and Bombardier shall give Amtrak a bill of sale thereto transferring such title in an "as is" condition. If Amtrak fails to exercise either of the above options and the subject order, rule, regulation or denial of approval remains in effect at the time of acceptance, Amtrak may, following acceptance, terminate this Agreement subject to the payment to Bombardier of the applicable cancellation charge provided for in Exhibit C annexed hereto.

6.2 If following acceptance by Amtrak of the Trains, any governmental agency or railroad with which Amtrak has a contract to operate its trains issues orders, rules or

regulations or amends those presently in effect to preclude the contemplated operation by Amtrak of the Trains in accordance with Section 9 or denies any approval necessary for such operation, Amtrak shall have the option (i) under the provisions of Section 8 to request Bombardier to make such modifications as are necessary to effect compliance by the Trains therewith or to obtain such approval and rental shall continue to be payable to Bombardier during the period required to effect any such modifications or (ii) to return the Trains to Bombardier subject to the payment to Bombardier of the applicable cancellation charge provided for in Exhibit C annexed hereto; in which event the Lease Term will terminate and Section 16 hereof shall apply to such redelivery.

7.1 Payments. In consideration of the lease herein granted by Bombardier to Amtrak, Amtrak agrees to pay to Bombardier the monthly rentals as set forth in Exhibit D which, in respect of the first Train, shall be first payable in immediately available funds one month from the date of execution of the Certificate of Acceptance for such Train (unless Amtrak elects to terminate this Agreement pursuant to Section 6.1 hereof) and on the same day of each succeeding month thereafter of the Lease Term for such Train (with payments for portions of a month to be prorated based on a thirty-day month) and, in respect of the second Train, shall be first

payable in immediately available funds one month from the date of execution of the Certificate of Acceptance for such Train (unless Amtrak elects to terminate this Agreement pursuant to Section 6.1 hereof) and on the same day of each succeeding month thereafter of the Lease Term for such Train (with payments for portions of a month to be prorated based on a thirty-day month).

7.2 Free Issue. As stated in Exhibit A, Amtrak agrees to provide Bombardier with the following items "free issue" which will be depreciated at the annual rate shown during the Lease Term:

(a) Seats	12.5%
(b) Carpeting (floor, ceiling and wall)	12.5%
(c) Radios	10%
(d) Communications system	10%
(e) Cab signal equipment	10%
(f) Car fault alarm panels	10%
(g) Food service units fully equipped	6%

In the event of termination of this lease agreement, Amtrak shall have the option to either remove "free issue" material from the Trains at its expense or sell such material to Bombardier, provided, however, Bombardier may decline to purchase the cab signal equipment, car fault alarm panels, radios, seats or food service units if any such items do not conform to Canadian Ministry of Transport standards in effect

at the time of termination in which event Amtrak will remove "free issue" material not purchased. The price of "free issue" material sold to Bombardier, provided it is in good condition (normal wear and tear excepted), shall be the original cost to Amtrak less the depreciation percentage stated above.

8. Modifications.

8.1 Amtrak may, at any time, by written order, make changes in Exhibit A if within its general scope. If such changes cause an increase or decrease in Bombardier's cost, or time required for manufacture of the Trains, Bombardier shall so advise Amtrak and the change shall not be implemented until the parties agree within a reasonable period of time on an equitable adjustment in the rental payments in Section 7.1 and the purchase option price in Exhibit H as well as the completion dates referred to in Section 4. Where the cost of property made obsolete or excess as the result of a change is included in Bombardier's claim for adjustment, Amtrak shall have the right to prescribe the manner of disposition.

8.2 During the Lease Term for each Train, neither party shall make modifications or alterations to the said Train unless it has obtained the written consent of the other

party therefor, which consent shall not be unreasonably withheld. All modifications and/or alterations performed by or for either party shall be at the sole expense of such party.

9. Use of the Trains. During the Lease Term the Trains (or the Locomotives or Coaches separately) shall be operated only by Amtrak or its agents and only in a lawful manner as a carrier of passengers by rail for test purposes. It shall be Amtrak's responsibility to obtain and maintain any and all licenses, permits or other authorizations from any governmental authority as may be required to enable it to do so. The Trains (or the Locomotives or Coaches separately) will be operated only (i) by duly qualified and competent persons; (ii) in accordance with applicable U.S. federal, state and local laws and regulations and, to the extent not inconsistent therewith, operating manuals or instructions of Bombardier for the Locomotives and the Coaches which manuals or instructions shall be in the English language and shall be furnished by Bombardier to Amtrak for review and comment prior to the start of the test program as defined in Section 3 above. It shall, however, be Amtrak's objective to test the feasibility of increasing the speed of Amtrak train operation over certain lines and, provided that the Federal Railroad Administration and the railroad over which the Trains (or the

Locomotives or Coaches separately) will operate concur, it is the intent of Amtrak to operate the Trains (or the Locomotives or Coaches separately) at speeds which may exceed the maximums presently in effect on specified lines of track.

10. Maintenance. Amtrak, shall, at its own costs, perform or cause to be performed all maintenance and repairs, including all required overhauls necessary to keep the Locomotives and Coaches in a condition equivalent to their condition at the time of acceptance, reasonable wear and tear excepted, and in fully operable condition as may be required by applicable laws, regulations and manuals.

Bombardier shall furnish to Amtrak for review and comment prior to the start of the test program as defined in Section 3 above its maintenance and overhaul manuals which it considers necessary for the Lease Terms. These manuals shall be in the English language and to the extent applicable shall be followed by Amtrak with respect to inspections, maintenance, repairs, replacements and overhauls of the Locomotives and Coaches.

All repair, maintenance and replacement work with respect to the Locomotives and Coaches shall be of good quality and shall be performed in a first-class manner by qualified personnel and in keeping with best railroad practices.

All equipment and parts installed in or on the Locomotives and/or Coaches by Amtrak which are not equipment or parts purchased from Bombardier shall be new, newly overhauled or in good serviceable condition with a fair value and utility at least equal to the value of the unit replaced and shall be owned by Amtrak free and clear of all liens and encumbrances. Title to all replacement units shall automatically pass to Bombardier upon installation, and title to all units removed shall automatically pass to Amtrak when the replacement unit is installed. Except with the written consent of Bombardier there shall be no substitution of units other than as required by the pertinent maintenance, repair and overhaul procedures.

11. Technical Assistance.

11.1 Prior to the acceptance of the first Train, Bombardier will arrange for training not to exceed one month per group (each group not to exceed 12 persons) as approved by Amtrak for personnel of Amtrak and other railroads as designated by Amtrak. Such training will be at the expense of Bombardier, excluding salaries and travel and living expenses of Amtrak attendees.

11.2 During the Lease Term Bombardier shall provide on-site at least one fully competent project engineer to assist in the inauguration of the Trains into test service and to advise railroad personnel on all operating and maintenance matters. Such other personnel as may be required will be as mutually agreed.

12. Warranty. The warranty obligation of Bombardier set forth in this Section is in lieu of all other warranties expressed or implied arising by law or otherwise including but not limited to any implied warranty or merchantability or fitness for a particular use.

- a) Bombardier warrants that the Trains and spare parts furnished hereunder shall be in compliance with the specifications set forth in Exhibit "A" annexed hereto.
- b) Bombardier warrants that the Trains and spare parts manufactured by it, including such components as may be manufactured by other manufacturers and supplied by Bombardier as part of the Trains, are free from defects in design, material and workmanship.

- c) Bombardier's liability under the warranties referred to in sub-Sections a) and b) above of this Section 12 is limited to repair or replacement, at Bombardier's option, of any part of the Trains, which, despite recommended use and maintenance, should prove to be defective in design, material or workmanship, or does not comply with the specification (Exhibit A) as well as any damage to the Trains resulting therefrom. Bombardier's obligation shall commence with date of acceptance and continue during the Lease Term for each Train provided always that Amtrak gives prompt notice in writing to Bombardier of any defect which may arise and of the damages occasioned by same.
- d) Bombardier's liability under the warranties referred to in sub-Sections a) and b) above of this Section 12 shall not extend to any defect or defects which were caused in whole or in part by normal wear and tear, by failure to comply with its operating and maintenance recommendations, by misuse, negligence or

accident, by repairs, modifications or alterations not authorized or approved by it, or by damage in transit after delivery. Except as otherwise stated herein Bombardier shall not be liable to Amtrak for any indirect or consequential damages resulting from any such defect including but without limitation, loss of Amtrak's profits or revenue, loss of use of Amtrak's equipment, or any other substantially similar liability. Upon the expiration of the warranty for each Train, all such liability with respect to such Train, or any part or parts thereof including any part or parts repaired or replaced by reason of this warranty, shall terminate.

13. Taxes and Customs Duties. Liability for all taxes (except Bombardier's taxes on or measured by income) and customs duties which may be asserted or due in the United States under the laws of the United States and any subdivision thereof, including but without limitation any state, county, municipality, or the District of Columbia, as a result of the lease or operation of the Trains or purchase of the option

items under Section 7.2 or the purchase of the Trains pursuant to Exhibit H hereof shall be paid or otherwise disposed of by Amtrak at its expense. Bombardier shall promptly notify Amtrak when any such tax or duty is claimed or otherwise asserted or assessed against Bombardier. Thereupon, Amtrak shall promptly advise Bombardier whether Amtrak intends to contest the amount or validity of such tax or duty. Amtrak, at its expense, may undertake such contest with the full cooperation of Bombardier. However, Bombardier, at its expense and option, may be separately represented in such matters by counsel of its own choosing. Amtrak shall retain control of the action or suit.

Taxes on or measured by Bombardier's income which may be asserted or due in the United States under the laws of the United States and any subdivision thereof, including but without limitation any state, county, municipality, or the District of Columbia, as a result of the lease or operation of the Trains shall be paid or otherwise disposed of by Bombardier at its expense. Bombardier agrees to indemnify and hold Amtrak harmless from any liability for such taxes including interest and penalties thereon or any liability for amounts which Amtrak at the instruction of Bombardier does not withhold for payment thereof. Bombardier agrees to provide

Amtrak upon its reasonable request with a form of security reasonably acceptable to Amtrak to secure the obligations of Bombardier to Amtrak undertaken pursuant to this paragraph.

Conversely, liability for all taxes and levies which may be asserted or due in Canada under the laws of Canada as a result of the lease or operation of the Trains or purchase of the option items under Section 7.2 or the purchase of the Trains pursuant to Exhibit H hereof shall be paid or otherwise disposed of by Bombardier at its expense. Amtrak shall promptly notify Bombardier when any such tax or levy is claimed or otherwise asserted or assessed against Amtrak. Thereupon, Bombardier shall promptly advise Amtrak whether Bombardier intends to contest the amount or validity of such tax or levy. Bombardier at its own expense may undertake such contest with the full cooperation of Amtrak. However, Amtrak, at its expense and option, may be separately represented in such matters by counsel of its own choosing but Bombardier shall retain control of the action or suit.

14. Liens. Amtrak, during the respective Lease Terms for each Train shall not create or suffer to exist any lien, attachment, mortgage or other encumbrance upon or against the said Train and Amtrak shall indemnify and save Bombardier harmless from and against any such lien, attachment

mortgage or other encumbrance. If at any time any such lien, attachment, mortgage or other encumbrance shall exist or be levied upon the Trains, Amtrak will cause the same forthwith to be discharged by bond or otherwise. In the event Amtrak shall fail to so discharge any such lien, attachment, mortgage or other encumbrance, Bombardier may do so. Upon demand Amtrak shall pay to Bombardier the amount so paid by Bombardier together with Bombardier's costs and expenses including reasonable counsel fees. In addition, Amtrak shall reimburse Bombardier for any delay in redelivery at a monthly rate equivalent to the rental provided for in Section 7.1 hereof. The obligations of this Section shall not apply to mechanics, tax or other like liens arising in the ordinary course of business for obligations which are not overdue or the validity of which are being contested by Amtrak in good faith provided, however, that any such mechanics, tax or other like liens shall be discharged upon termination of the respective Lease Terms for each Train.

15. Damage to, Destruction or Condemnation of a Unit.

For the purpose of this Section the term "unit" shall denote either a locomotive or a coach of a Train.

In the event of damage to or partial destruction of a unit during the Lease Term of either Train (other than damage or partial destruction covered by Section 12 hereof) whether or not such damage or partial destruction results from the failure of Amtrak to exercise reasonable care, Amtrak shall repair and restore the unit to its condition prior to such damage or partial destruction. Any such repair or restoration shall be accomplished at the full cost and expense of Amtrak and if such repair or restoration is not completed at the end of the applicable Lease Term, the said Lease Term shall be extended by the number of days necessary for such completion subject to pro rata rental payments by Amtrak computed in accordance with Section 7.1 and Exhibit D.

In the event of condemnation or total loss or constructive total loss (i.e. damage to an extent determined in good faith by Amtrak to render repair impractical or uneconomical and other than loss covered by Section 12 hereof) of a unit during the Lease Term of either Train whether or not such condemnation, total loss or constructive total loss results from the failure of Amtrak to exercise reasonable care, the liability of Amtrak to Bombardier for such condemnation, total loss or constructive total loss shall be to pay to Bombardier promptly thereafter the Stipulated Loss Value for such unit as described in Exhibit E annexed hereto, and thereafter the monthly rentals as required by Section 7.1

shall be reduced by the proportion that the 0 month Stipulated Loss Value for such unit bears to the total 0 month Stipulated Loss Value for the Train. Upon payment of such an amount, title to the unit shall pass to Amtrak, in the case of total loss or constructive total loss, and Bombardier shall give Amtrak a bill of sale thereto transferring such title in an "as is" condition.

Amtrak will cause to be carried and maintained at all times and at its own expense during the Lease Terms of each Train physical damage insurance covering such Train in the names of Amtrak and Bombardier (as their interest may appear) in such form as is commonly maintained on comparable equipment by companies similarly situated insuring against all risks of physical damage to the Train as provided under a standard all-risk policy. Such standard all-risk physical damage insurance policy shall provide that all losses thereunder will be adjusted with Amtrak and Bombardier and will be payable to Amtrak and Bombardier as their interest shall appear. Any net insurance proceeds resulting from insurance carried by Amtrak received by Bombardier in respect of a unit suffering total loss or constructive total loss shall be deducted from the amounts payable by Amtrak to Bombardier in respect of such total loss or constructive total loss.

If Bombardier shall receive any such net insurance proceeds or payments for condemnation after Amtrak shall have made payments pursuant to this Section 15, without deduction for such net insurance proceeds or such payments for condemnation, Bombardier shall remit such proceeds or payments to Amtrak up to an amount equal to the Stipulated Loss Value with respect to a unit paid by Amtrak and any balance of such proceeds or payments shall remain the property of Bombardier.

The policies of insurance required under this Section shall be valid and enforceable policies issued by insurers of recognized responsibility reasonably acceptable to Bombardier. Evidence in the form of an Insurance Certificate and related endorsements of each and every policy shall be provided to Bombardier on or before the date of acceptance. "Insurance Certificate" shall mean a certificate with respect to the insurance required to be maintained pursuant to this Section, signed by an independent insurance broker (who may be the broker regularly retained by Amtrak) reasonably acceptable to Bombardier, which shall describe the risks covered by the policy of insurance then in force covering risks related to the Trains, identify the insurer with which such policy of insurance is carried and maintained, and state that such policy of insurance complies in all respects with the provisions of this Section of this Lease Agreement.

Bombardier's acknowledged acceptance of, its failure to object in writing within 45 days following receipt of, or its action on, such a certificate shall be sufficient evidence that such certificate is acceptable to Bombardier.

The original policies, which shall be available for inspection by Bombardier at Amtrak's Washington, D.C., office upon reasonable request, may be blanket policies covering other equipment not covered by this Lease Agreement provided that any blanket policy shall, in the endorsements provided therein, specifically designate the Trains as being included therein and shall name Bombardier and Amtrak as insured parties thereunder with respect to such units. All such policies shall:

- (a) Contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder be adversely changed without at least 30 days prior written notice to Bombardier by the insurers or the insurers' authorized representative, as the case may be;
- (b) Contain a breach or violation of warranties, declarations, or conditions clause which shall provide that the interests of Bombardier thereunder shall not be rescinded, impaired, or invalidated by an act or omission of Amtrak or any other person;

- (c) Not contain a limitation on the amount payable thereunder with respect to the use of the units for purposes other than those permitted by the terms of the policy, any change in title or ownership of the units or any foreclosure or other proceeding or notice of sale relating to the units or this Lease Agreement;
- (d) Be primary without right of contribution from any other insurance which is carried by Bombardier and shall expressly provide that all provisions thereof shall operate in the same manner as if there were a separate policy covering each insured; and
- (e) Waive any right of subrogation of the insurers to any right of Bombardier or Amtrak against any person insured under such policy and shall waive any right of the insurers to any setoff or counter-claim or any other deduction, whether by attachment or otherwise, in respect of any liability of Bombardier or Amtrak.

16. Redelivery.

16.1 Redelivery of each Train shall be made by

Amtrak, at or before the conclusion of the applicable Lease Term, to the Bombardier plant, Montreal, Canada or at such other place as may be mutually agreed. Upon notification by Amtrak that each Train is ready for shipment to Canada, Bombardier shall inspect same within seven (7) days of receipt of said notification and, if found in satisfactory condition, shall execute a Certificate of Redelivery Inspection, Exhibit F, within three (3) days of said inspection.

16.2 Upon arrival of each Train at Bombardier's plant, Bombardier shall promptly inspect same. If no damage from transportation is discovered, Bombardier shall execute a Redelivery Receipt in the form of Exhibit G, annexed hereto, execution of which shall not be unreasonably withheld. Any shipping damage shall be reported immediately by Bombardier to Amtrak and Amtrak shall immediately repair or cause to have repaired such damage at its cost. Upon correction of such damage, the Redelivery Receipt shall be promptly executed by Bombardier.

16.3 At redelivery the Trains shall be in good working order, reasonable wear and tear excepted.

16.4 All expenses (except Canadian duty, if any) in connection with the export of the Trains from the United

States and their shipment to Bombardier's plant, shall be borne by Amtrak.

17. Trademarks and Patents. Bombardier shall indemnify and hold harmless Amtrak and its officers, agents and employees against liability, including costs, for infringement of any patents, trademarks and service marks which have been registered with the United States Patent Office on or before the execution date of this Agreement in respect of the Trains, provided that such indemnification shall not apply to (a) any trademark, service mark or patent used or applied by Amtrak without the consent of Bombardier, (b) a claimed infringement which is settled without the consent of Bombardier, unless required by final decree of a court of competent jurisdiction, (c) any agreement with any third party as to the nature and extent of any losses, expenses, damages or costs or (d) with respect to any "free issue" material supplied by Amtrak to Bombardier. The foregoing indemnity shall not be effective unless Bombardier shall have been notified in writing as soon as practicable by Amtrak of the claim or suit or action alleging the infringement, and unless Amtrak shall agree to be represented in the disposition of any claim or any such action or suit by attorneys selected by Bombardier at Bombardier's expense. Amtrak, at its expense, may be represented in such matters by counsel of its choosing. However, Bombardier shall retain control of any claim, action or suit.

18. Spare Parts. The parties acknowledge that Bombardier has provided Amtrak with a list of spare parts for the Trains including protection components and consumable spares. The parties further acknowledge that Amtrak has paid to Bombardier the sum of \$1,200,000 (U.S. funds) as an advance towards the purchase of said spare parts. Any deficiency or excess with respect to said advance payment shall be settled upon acceptance of the first Train. Spare parts for the Trains shall be delivered to Amtrak F.O.B. Montreal on or before acceptance of the first Train. Payment for any parts delivered after acceptance of the Trains will be handled on an individual billing basis and paid within thirty (30) days of receipt by Amtrak of Bombardier's invoice with, where required, supporting documentation. In the event that Amtrak does not exercise its option to purchase the Trains pursuant to Exhibit H hereof, Bombardier agrees to repurchase unused spare parts and used warranty parts at the original selling price to Amtrak. Any repurchase of used non-warranty spare parts shall be subject to agreement between the parties. Bombardier agrees to provide Amtrak with a surety bond in the amount of \$700,000 (U.S. funds) reasonably acceptable to Amtrak to secure the repayment of the advance referred to in this Section.

19. Inspection. Amtrak shall permit Bombardier or its duly authorized agent or representative to inspect the

Trains at any reasonable time, including periods during which the Trains are being operated, and shall furnish Bombardier and its duly authorized agent or representative any information with respect to the said Trains and their use that Bombardier reasonably may request.

20. Destruction Prior to Acceptance. If one or more of the Trains are damaged or destroyed prior to acceptance hereunder to the extent Bombardier determines in good faith that repair is impractical or uneconomical, this Agreement upon notice by Bombardier to Amtrak shall be of no force or effect with respect to such damaged or destroyed Train or Trains and both Bombardier and Amtrak shall be excused from performance hereunder with respect thereto and any payments made by Amtrak to Bombardier shall be returned to Amtrak.

21. Ownership and Identification. Bombardier shall remain the owner of the Trains during their respective Lease Terms. Bombardier shall have the right to affix on each unit of the Trains a plaque or other suitable marking of a mutually agreeable size attesting to ownership by Bombardier. Such plaque shall not be removed by Amtrak. Amtrak shall have the right to place its own normal identifying marks on the Trains, including its distinctive exterior painting, logos and numbering.

22. Force Majeure. Bombardier shall not be liable for any failure of or delay in delivery of the Trains or the performance of any other obligation to be undertaken by it if such failure or delay is due to events of Force Majeure (which term shall include but not be limited to Acts of God, riots, fires, floods, governmental acts, strikes or labor troubles causing cessation, slow down or interruption of work at Bombardier's plants, or any other cause (whether similar or dissimilar to the foregoing) beyond the control of Bombardier). The dates specified herein by which delivery or other obligations of Bombardier are to be performed shall be extended by the duration of any such event of Force Majeure.

23. Indemnity.

23.1 Bombardier shall indemnify and hold harmless Amtrak and each of Amtrak's officers, employees and agents from and against all claims and liabilities, including, costs and expenses incident thereto, which may be suffered by, accrue against or be recoverable from Amtrak and/or any of Amtrak's officers, employees or agents by reason of loss of or damage to Amtrak or third party property or the Trains, or injury to or death of any person arising out of or in connection with the testing, operation and maintenance of the Trains during the Lease Terms if such loss, damage, injury or death is caused by the sole negligence of Bombardier or any defect

subject to warranty under Section 12. Bombardier shall not be liable to Amtrak for any indirect or consequential damages including but without limitation loss of Amtrak's profits or revenues, loss of use of Amtrak's equipment, or any other substantially similar liability; however, this subsection 23.1 shall not apply in any case where the negligence of Amtrak or any of Amtrak's officers, employees or agents or any third party contributed to the loss, damage, injury or death.

23.2 Amtrak shall indemnify and hold harmless Bombardier and each of Bombardier's officers, employees and agents from and against all claims and liabilities including costs and expenses incident thereto, which may be suffered by, accrue against or be recoverable from Bombardier and/or any of Bombardier's officers, employees or agents by reason of loss of or damage to Bombardier or third party property (except for the Trains which are covered in Section 15) or injury to or death of any person arising out of or in connection with the testing, operation and maintenance of the Trains during the Lease Terms if such loss, damage, injury or death is caused by the sole negligence of Amtrak. Amtrak shall not be liable to Bombardier for any indirect or consequential damages including but without limitation loss of Bombardier's profits or revenues, loss of use of Bombardier's equipment, or any other substantially similar liability; however, this subsection 23.2 shall not apply in any case where the negligence of Bombardier

or any of Bombardier's officers, employees or agents or any third party or any defect subject to warranty under Section 12, contributed to the loss, damage, injury or death.

23.3 Bombardier shall bear the expense of prosecuting the settlement and defense of, and pay any settlement or final judgment disposing of any claim, action or proceeding arising from Section 23.1 above. Amtrak shall bear the expense of prosecuting the settlement and defense of, and pay any settlement or final judgment disposing of any claim, action or proceeding arising from Section 23.2 above. In any case where contributory negligence of the other party is alleged, that party shall be entitled to separate representation by counsel of its own choice.

23.4 In case any claim, action or proceeding shall at any time be brought against Amtrak asserting a liability for which Bombardier is responsible, Amtrak shall promptly give notice to Bombardier of such claim, action or proceeding and thereafter provide all such information as may from time to time be requested. In case any claim, action or proceeding shall at any time be brought against Bombardier asserting a liability for which Amtrak is responsible, Bombardier shall promptly give notice to Amtrak of such claim, action or proceeding and thereafter provide all information as may from time to time be requested.

24. Reliability Standard. The parties agree that the monthly reliability standard for each Train shall be a 90 percent availability for service, i.e. available for assigned runs during the month with all major subsystems in good working order; provided, however, that Amtrak has maintained the Trains in accordance with Bombardier's maintenance manuals pursuant to Section 10 hereof. For the purpose of this Section a Train shall consist of at least one locomotive, food service car and three coaches. Evidence of unavailability shall be a bad order report or other document made in accordance with customary railroad practice and major subsystems shall include but not be limited to heating, air conditioning, lighting, toilets and doors but shall exclude free issue items as listed in Section 7.2 above.

The numerator (days of availability) and denominator (days in a month) of each of the fractions used to compute the above percentages for any month shall be reduced by the number of days of unavailability due to causes beyond the control of the parties and one day for periodic maintenance as required by law. If the denominator for any fraction is so reduced below 10 as a result, no computation shall be made for that month.

A determination as to whether a Train has met the monthly reliability standard shall first be made for the

first full calendar month after expiration of three months of its Lease Term and shall continue to be made each month to and including the last full month of its Lease Term. The basis for making the determination shall be the availability record maintained by Amtrak in cooperation with Bombardier's project engineers. Should a Train fail to meet the monthly reliability standard, Bombardier shall pay Amtrak as liquidated damages an amount of \$750 per day for each of the days by which such Train fails to meet the standard.

25. Default. Should either party default in the carrying out of its obligations under this Agreement and such default is not remedied within thirty (30) days after written notice thereof is received from the other party, the other party shall be entitled to terminate the lease of the Trains immediately, without prejudice to its right to take action against the defaulting party for full reparation for the damage incurred by it as the result of this default. In addition, the contractual provisions governing the relationships of the parties after the termination of the lease shall continue and all legal means can be used to enforce their fulfillment. The failure to terminate the Agreement upon any one default shall not limit the right to do so upon a subsequent default, and the waiver of any one default by failure to give notice shall not be considered a waiver of any other default.

26. Options.

26.1 Amtrak shall have the option to extend the Lease Term for each Train for one (1) year upon notification to Bombardier at least thirty (30) days prior to expiration under Section 2. The provisions of this Agreement shall apply during the extended Lease Terms. Should Amtrak not extend, the Trains will be returned to Bombardier in accordance with Section 16 subject to the payment by Amtrak to Bombardier of the applicable charge calculated in accordance with Exhibit C annexed hereto.

26.2 Upon exercise of Amtrak's option to purchase the Trains pursuant to Exhibit H, Amtrak shall redeliver the Trains to Bombardier in Canada. Upon redelivery of each Train the Lease Term for such Train shall terminate and Bombardier shall make such modifications to the Trains as Amtrak shall specify at a cost to be agreed upon by Amtrak and Bombardier. Upon completion of said modifications, the Trains shall be presented by Bombardier to Amtrak for acceptance. Amtrak shall accept the Trains F.O.B Montreal, Canada. Upon presentation to Amtrak of a bill of sale by Bombardier conveying legal title to the Trains to Amtrak and warranting such Trains are free of all adverse claims, Amtrak shall pay Bombardier the applicable purchase price set forth in Exhibit H plus agreed upon modification charges.

26.3 Amtrak shall also have the option to purchase

up to ten (10) additional LRC trains at any time up to ninety (90) days following the termination of this Agreement with prices, delivery schedules and other terms to be agreed upon by the parties.

27. Notices. Any notice which is required or permitted to be given hereunder pursuant to Sections 3, 4, 6.1, 8, 12, 13, 16.1, 17, 20, 23.4 and 25 to or by either party hereto shall be in writing and either delivered to the party hereto to which it is addressed or mailed to such party by prepaid registered post. Any such notice, if delivered or mailed,

(a) to Bombardier, shall be addressed as follows:

Bombardier Inc.
800 Dorchester Blvd. West
Montreal, Quebec

Attention: Vice President, Marketing
Mass Transit Division

(b) to Amtrak, shall be addressed as follows:

National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Attention: Director - Equipment Acquisition

or, in either case, to such other address as the parties may, from time to time, have notified to each other. Any notice so delivered shall be deemed to have been received by the addressee at the time and date of its delivery. Any notice so mailed shall be deemed to have been received by the addressee

five days after the date of its being so mailed, provided however, that any notice given by cable or telex and confirmed the same day by mail as aforesaid shall be deemed to have been received by the addressee on the day such cable or telex was sent.

28. Special Expenses. Except as otherwise specifically provided in the present Agreement, neither Amtrak nor Bombardier shall bear any expense incurred by the other in connection with the negotiation, execution or implementation of this Agreement.

29. Interpretation. This Agreement with its exhibits constitutes the entire agreement of the parties as to leasing and purchasing the Trains and supersedes all prior agreements, whether written or oral, between the parties, including the Lease Agreement between Bombardier-MLW Limited and Amtrak dated as of the date hereof and previously executed by the parties. This Agreement may be altered, modified or amended only by a written document signed by both parties hereto.

The division of this Agreement into sections and the captions applicable thereto is for convenience only, and shall not affect the interpretation or construction of this Agreement.

By express agreement between the parties, this Agreement and its interpretation shall be governed by the laws of the District of Columbia.

30. Exercise of Discretion. All decisions, approvals, certifications, determinations, opinions and other similar acts expressly called for in this Agreement shall be made in a manner that is consistent with the intent of this Agreement and without partiality to either party so as to ensure faithful performance of this Agreement by both parties. All such decisions, approvals, certifications, determinations, opinions and other similar acts shall not be final and any dispute in connection therewith shall be subject to arbitration in accordance with the provisions of Section 31.

31. Arbitration. In the event that any dispute or difference (other than a dispute or difference arising out of the exercise of the option referred to in Section 26.3) arises between the parties hereto as to the interpretation or operation of this Agreement or as to their respective rights and liabilities hereunder which cannot be settled by mutual agreement, such dispute or difference shall be referred to arbitration by three arbitrators, one to be appointed by each party, and a third to be appointed by the first two arbitrators. If the two arbitrators appointed by each party cannot

agree on the selection of the third, the third shall be appointed by the American Arbitration Association. The hearings and all other proceedings in such arbitration shall be conducted at New York City, New York or such other place or places as shall be mutually agreed to by the parties and, except as herein otherwise provided, they shall be conducted under and in accordance with the Rules of the American Arbitration Association. The decision of the majority of the arbitrators in such proceedings shall be final and binding upon the parties hereto and shall be enforceable in any Court having jurisdiction in the premises.

32. Assignment. Amtrak or Bombardier may assign its rights hereunder upon reasonable notice to the other provided, however, neither party hereto may delegate its obligations under this Agreement without the written consent of the other party which consent shall not be unreasonably withheld. Subject to the provisions of Section 35 hereof, any payments due by Bombardier or Amtrak to an assignee of the other may be offset against payments due by such assignee to either Amtrak or Bombardier as the case may be.

33. Conflict. In the event of any conflict or inconsistency between this Agreement and the Exhibits annexed thereto, the wording of this Agreement shall take precedence.

34. Late Delivery. If Bombardier fails to tender the Trains in accordance with Section 4.1 of this Agreement, the actual damage to Amtrak will be difficult or impossible to determine. Therefore, in lieu of actual damages, Bombardier shall pay Amtrak an amount of \$100 per calendar day of delay beyond the date on which the first Train is scheduled to be ready for acceptance and an amount of \$50 per calendar day of delay beyond the date on which the second Train is scheduled to be ready for acceptance. If the delay in tendering a Train is beyond three (3) months from the respective date of acceptance, Amtrak shall have the right to cancel this Agreement and any payments made by Amtrak to Bombardier shall be returned to Amtrak. The provisions of this Section 34 shall not apply to the extent that delay in tendering the Trains is due to force majeure under Section 22 occurring on or after February 5, 1980 and the provisions of Section 22 shall not apply to the extent that delay in tendering the Trains is due to force majeure occurring prior to February 5, 1980.

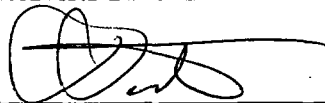
35. Escrow Agreement.

Amtrak shall invoice Bombardier for any amounts payable under Sections 24 and 34. Bombardier will pay amounts invoiced within 30 days of the invoice date. If Bombardier shall reasonably dispute any amounts invoiced, Bombardier

shall advise Amtrak in writing of such dispute and deposit such amounts into an escrow account within 30 days of the invoice date. All amounts deposited to said escrow account shall remain therein until written instructions for disbursement are received by the escrow agent either jointly from Amtrak and Bombardier or from the arbitration panel provided for under Section 31 of this Agreement. The escrow agent shall be a financial institution acceptable to Amtrak and Bombardier and shall be appointed before the date of provisional acceptance. Interest earned on deposits, if any, shall be disbursed pursuant to the instructions provided for above.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the 5th day of February, 1980.

BOMBARDIER INC.


Title: V.P. Treasurer

*Rec'd
WTC
5/27/80*

NATIONAL RAILROAD PASSENGER CORPORATION

F. H. Abate
Title:

Marie Claire Simonian
Title: Secretary

Elyse Hansen
Title:

CANADA)
PROVINCE OF QUEBEC)
CITY OF MONTREAL) ss:
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)


I, Murrow B. Morris Consul of the
United States of America at Montreal, Province of Quebec, Canada,
duly commissioned and qualified, do hereby certify that, to the
best of my knowledge, Robert Brabander

was, at time of signing the annexed certificate, a Notary

at Montreal, Province of Quebec,
Canada, duly commissioned and qualified, to whose official acts
faith and credit are due.

Per the contents of the annexed document the Consulate
General assumes no responsibility.

IN WITNESS HEREOF, I have hereunto set my hand and
placed the seal of the Consulate General of the United States
at Montreal, Quebec, Canada, this 30th day of May, 1980.


Murrow B. Morris

Murrow B. Morris
Consul of the United States of America

CORPORATE FORM OF ACKNOWLEDGEMENT

CANADA, PROVINCE OF QUEBEC

District of Montreal, ss:

On this 30TH day of MAY 1980,

before me personally appeared Marie-Claire Simoneau, to me personally known, who being by me duly sworn, says that she is the Secretary of Bombardier Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

[Signature]
Notary

CORPORATE FORM OF ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA

On this 27th day of May 1980,

before me personally appeared Elyse G. Wander, to me personally known, who being by me duly sworn, says that she is the Corporate Secretary of National Railroad Passenger Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

[Signature]
Notary

My Commission Expires July 14, 1982

LRC TRAIN

Manufacturer's Certification

The undersigned, an authorized representative of Bombardier certifies that Train No. _____ (consisting of Locomotive No. _____ and Coach Nos. _____) has been constructed in accordance with Exhibit A of the Lease Agreement dated _____, 1977, between Amtrak and Bombardier, except for the following items:

Date: _____

Authorized Representative
Bombardier Inc.

Certificate of Acceptance

(In accordance with the terms of Section 4.2)

The undersigned, an authorized representative of Amtrak, hereby accepts Train No. _____ (consisting of Locomotive No. _____ and Coach Nos. _____) as complying with the Lease Agreement dated _____, 1977, between Amtrak and Bombardier, except for the following items:

Date: _____

Authorized Representative
Amtrak

Charges Upon Termination

The amount to be amortized through lease payments by Amtrak for the two Trains is \$997,928 (U.S. funds). If any modification is made under Section 8.1 of the foregoing Agreement, the amount to be amortized will be adjusted by 10% of the amount of the adjustment to be made in the purchase price.

The lease payments in Exhibit D amortize part of the above amount after one year. Should Amtrak fail to exercise the option provided for in Section 26.1 of the foregoing Agreement or should the lease be terminated within its term under the conditions of Section 6, Amtrak will pay Bombardier the unamortized portion of the above amount owing at the time of redelivery.

Exhibit D

1. Basis for Lease Payments

U.S. Dollars

Total firm price, F.O.B. port of entry, for two trains manufactured in accordance with Exhibit A and the terms of the Lease Agreement	\$9,379,876
Residual after lease period	\$8,381,948
Fixed amount to be amortized through payments by Amtrak	\$ 997,928

If any modification is made under section 8.1 of the foregoing Agreement, the amount to be amortized will be adjusted by 10% of the amount of the adjustment to be made in the purchase price.

2. Monthly Payments

Monthly payments to be paid by Amtrak under the lease agreement shall be \$20,790.16 (U.S. funds) per Train.

STIPULATED LOSS VALUE

Reference Stipulated Loss Value in accordance with Clause 15
of Lease Agreement.

STIPULATED LOSS VALUE U.S. \$

<u>MONTH</u>	<u>PER COACH</u>	<u>PER FOOD SERVICE CAR</u>	<u>PER LOCOMOTIVE</u>
0	677,054	706,447	1,275,272
3	667,973	697,366	1,258,309
6	658,892	688,285	1,241,341
9	649,811	679,204	1,224,378
12	640,729	670,122	1,207,418
15	631,648	661,041	1,190,453
18	622,567	651,960	1,173,483
21	613,486	642,878	1,156,519
24	604,405	633,798	1,139,554

Appropriate adjustments will be made in the above figures
should modifications be made in the Trains in accordance with
Section 8.1.

LRC

CERTIFICATE OF REDELIVERY INSPECTION

The undersigned, an authorized representative of Bombardier, certifies that Train No. _____ (consisting of Locomotive No. _____ and Coach Nos. _____) has been inspected in accordance with Section 16.1 of the Lease Agreement between Bombardier and Amtrak dated _____, 1977, and has been found to be in satisfactory condition, as defined in Section 16.3 of said Agreement.

Date: _____

Authorized Representative
Bombardier Inc.

LRC

REDELIVERY RECEIPT

The undersigned, an authorized representative of Bombardier, certifies that Train No. _____ (consisting of Locomotive No. _____ and Coach Nos. _____) as redelivered to Bombardier's plant, has been inspected in accordance with Section 16.2 of the Lease Agreement dated _____, 1977, between Amtrak and Bombardier and has been found to be free of damage from transportation in the course of redelivery.

Date: _____

Authorized Representative
Bombardier Inc.

OPTION TO PURCHASE

Upon written notice at any time but no later than 90 days prior to the expiry of the Lease Term (other than pursuant to Section 26.2) for the first Train accepted, Amtrak shall have the option to purchase the two Trains at a price equal to \$9,379,876 minus the total lease payments made by Amtrak.

Appropriate adjustments to the purchase price will be made should modifications be made in the Trains in accordance with Section 8.1 of the foregoing Agreement.